(33)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 743 OF 2001

APPELLANT Biran Singh

Versus

NON-APPLICANT State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI JUSTICE L.C. BHADOO

Sd/-
L.C.BHADOO
Judge

POST FOR JUDGMENT ON 8-05-2007

JUDGE
7/05/2007

(34)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 743 OF 2001

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

APPELLANT Biran Singh son of Amarnath Singh Kanwar, aged about 30 years, resident of Village-Charra, Tahsil Katghora, Distt. Korba (Chhattisgarh)

Versus

NON-APPLICANT State of Chhattisgarh

Present:

Ms. J.A. Khan, counsel for the accused/appellant.
Mr. Akhil Mishra, P.L. for the State/respondent.

J U D G M E N T

(Delivered on 8th May 2007)

PER DHIRENDRA MISHRA, J

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment dated 19.6.2001 passed by learned VII Additional Sessions Judge, Bilaspur in Sessions Trial No.280/2000, whereby the learned trial court after holding the accused/appellant guilty for causing homicidal death of Budhwar Singh and his wife Harkunwar, convicted him under Section 302 of the IPC and sentenced him to undergo imprisonment for life separately for causing death of Budhram and Harkunwar.

2. Case of the prosecution, in nutshell, is that Ramlal, son of Budhwar Singh, gave Dehati Merg intimation (Ex.P/1) on 28.6.2000 to Police Station Bango, village Charra, to the effect that in the morning at about 9.00 a.m. he along with his younger brother Shyamlal had gone to *Jhabar* field. After some time his mother Harkunwar (since deceased) also reached the field and asked Koramiya Kanwar @ Biran Kanwar not to plough the field, who was getting the field ploughed by Hariram Aghariya in front of his house. At that time his father Budhwar Singh (since deceased) along with Buddhu Aghariya, Pratap Kanwar, Budhwar Kanwar and Puran

Gond reached there and persuaded Biran and returned back. His father and he remained there. His father uprooted the wooden peg fixed by Biran on their land, at that time Biran came with an axe from his home and assaulted Budhwar Singh on his neck from behind as a result of which he fell down. His mother Harkunwar was witnessing the incident from a nearby field. Biran ran after her and also assaulted her by axe on her neck and she also fell down. Both of his parents died and he returned home weeping and narrated the incident to his elder brother Ramprasad and sister Ramkunwar.

On the basis of this information Dehati Nalishi (Ex.P/2) was registered on the spot itself and thereafter, Merg intimation of Ex.P/3 and First Information Report of Ex.P/3 were recorded in the police station. Inquests of Ex.P/5 on the dead body of Budhwar Singh and Ex.P/6 on the dead body of Harkunwar were prepared in the presence of witnesses after giving notice to them. Dead body of Harkunwar was sent for autopsy to Primary Health Center, Podi under Ex.P/10-A where Dr. G.S. Jaha and Dr. (Smt.) K.B. Sonkar conducted postmortem and submitted their report Ex.P/10. Similarly, dead body of Budhwar Singh was sent for autopsy vide Ex.P/11-A to P.H.C. Podi where again the same doctors conducted postmortem and submitted their report of Ex.P/11. Spot map of Ex. P/14 was prepared by the Halka Patwari. Weapon of offence axe was taken into possession from the appellant vide Ex.P/15. Bloodstained *baniyan* of the appellant Biran was taken into possession vide Ex.P/16. Axe and *baniyan* were sent for examination under Ex.P/12-A and report of the doctor is Exs.P/12 & P/13. Station House Officer, P.S. Bango also prepared spot map of Ex.P/17. Seized articles i.e. plain & bloodstained soil, bloodstained clothing of deceased Budhwar Singh and Harkunwar and accused/appellant Biran and the bloodstained axe were sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex.P/18 and report of F.S.L. is Ex.P/19 and P/20. The articles seized during investigation were further sent to the serologists and report of the serologists is Ex.P/23.

3. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Katghora who in turn

committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by the trial Court.

4. Learned trial Court framed charge under Section 302 of the IPC. The accused/appellant abjured his guilt. Prosecution in order to establish the charge against the accused examined 11 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. He stated that witness Pratap and Hariram nourished animosity against his brother-in-law.

5. Learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above.

6. Homicidal death of deceased Budhwar Singh and Harkunwar is not in dispute. Even otherwise, eyewitness PW-1 Ramlal has stated that he saw the appellant assaulting his father Budhram and mother Harkunwar with axe, as a result of which they died. PW-2 Hariram has stated that he saw the appellant assaulting Budhwar with axe over his neck, thereafter he ran towards the *Basti* and informed the villagers. When he came back he saw that dead body of Harkunwar was also lying with some distance from the place of occurrence, there were injuries on her neck and according to him, she was also murdered by Biran. Dr. G.S. Jawa who conducted postmortem on the body of both the deceased persons, found injuries on the person of Harkunwar and Budhwar Singh as mentioned below:-

Injuries on the body of deceased Harkunwar

On external examination

1. Sharp cut edged wound, 2 ½" x 2" x 4" deep, oblique (post lateraly), medial side of right shoulder upper part (bone is fractured);

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2. Sharp cut edged wound 2.2" x 1" x 4" deep oblique, right, postero-anterior side of neck, middle part;

The edges are swollen and everted and wound gape, blood like stain of the edge of the wound, coagulated blood in the wound.

On dissection of the wound, injury No. (1) 7th vertebrae is fractured in two parts and oblique (sharp cut) and spinal cord is divide in two part from 7th vertebrae, (2) fifth cervical bone is fractured in two parts oblique (sharp cut) and spinal cord is divided in two parts from fifth cervical vertebrae. Arteries and veins around the vertebrae is cut. Injury No. (1) & (2) is antimortem in nature caused by hard & sharp object. Duration within 12 to 48 hours before postmortem.

The cause of death is haemorrhagic and neurogenic shock due to bleeding from injured parts and rupture of spinal cord.

Injuries on the body of deceased Budhwar Singh

On external examination

Sharp cutting edged wound 2.2" x 1" x 4" deep transverse, middle and post side of neck. The edges are swellen and everted wound gape, blood like stain on the edge of the wound, coagulated blood in the wound.

On dissection of wound : Fifth cervical bone is fractured in two parts (sharp cut), spinal cord is divided in two parts from fifth cervical vertebra, arteries and veins around the vertebra is cut.

The wound is antimortem in nature and caused by hard and sharp object, duration within 12 to 48 hours before postmortem.

The cause of death is haemorrhagic and neurogenic shock due to bleeding from injured parts and rupture of spinal cord.

Therefore, in view of above ocular and medical evidence, it is established that death of Budhwar Singh and Harkunwar was homicidal in nature.

7. Case of the prosecution against the appellant is mainly based on the statements of Ramlal, (PW-1), Hariram (PW-2), Pratap Singh (PW-3) as also on the report of chemical analysts and serologists.

8. Learned counsel for the appellant submits that PW-1 Ramlal is a child witness, aged about 9 years, he has claimed himself to be an eyewitness, however, from the cross-examination of this witness it would be evident that he is not a witness of truth and he has deposed on being tutored by his elders. The another eyewitness PW-2 Hariram is a witness of assault by the appellant to deceased Budhwar Singh and he has not seen the appellant assaulting Harkunwar, his presence on the spot is doubtful as is evident from the statement of PW-3 Pratap Singh Kanwar. In the alternative it is further argued that from the case of the prosecution it is clear that that deceased Budhwar came to the field armed with axe when the appellant was ploughing his field and tried to dispossess him and in these circumstances, the appellant exercised his right of private defence.

9. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

10. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment of trial Court.

11. PW-1 Ramlal, nine-year-old son of the deceased, who has lodged Dehati Merg intimation as also Dehati Nalishi, was found by the trial Court trustworthy as he was competent witness to understand the sanctity of oath and thus, his statement on oath has been recorded. He has stated that he recognizes the appellant who

is resident of village Charra, deceased Budhwar is his father, he does not know the name of his mother. The incident is of 10.00 a.m., at the time of incident he was standing near *Kosam* tree and his father was at a distance of 15-20 hands, when his father was uprooting the wooden peg, at that time accused assaulted his father with axe on his neck, as a result of which his father died. His mother was standing near his house by the side of *Kosam* tree, the accused/appellant assaulted her also on her shoulder and she also died. He narrated about the incident to his brother Ramprasad. His younger brother Shyamlal was also with him and thereafter number of villagers came there. After the incident police reached the spot, he narrated the incident to the police and put his signature on Dehati Merg intimation of Ex.P/1. Dehati Nalishi (Ex.P/2) also bears his signature. In the cross-examination this witness has stated that he used to take his cattle out of village for grazing, however, on the date of incident he did not go for grazing his buffalos. On that day one labour Santosh had gone to graze the buffalos. It is correct to say that seeing the incident he was frightened and out of fear he ran away from there. He had seen various persons ploughing their fields and he could not understand how the incident occurred. When he reached home he saw his brother and sister weeping and he joined them in weeping. He has admitted that he along with his mother had gone to the field since morning and his father arrived there much after. There is a quarrel between the accused and his mother and her mother had abused the appellant. However, he has denied the suggestion that he had gone to call his father on seeing that his mother was involved in quarrel and stated that his father has come on his own with an axe, there was no quarrel between the accused and his father. On the contrary, his father tried to reason that accused Biran that he should not plough, however, the accused was adamant to plough and he was not aggreable to the suggestion of his parents.

12. Learned counsel for the appellant referring to paragraph 16 of the statement of PW-1 Ramlal has argued that this witness is a tutored witness as he has admitted that he lodged the report as tutored by his brother Ramprasad and Pratap Singh (PW-3). He has

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denied the suggestion that in the quarrel axe of his father hit his father and mother and he is deposing before the Court on being tutored.

13. PW-2 Hariram has stated that on the date of incident he had gone as a labour to plough the field of accused Biran. At about 10.00 a.m. when he was ploughing the field, Ramprasad, Budhram and Budhwar, resident of Bango, Puran, Ramlal came there and asked accused Biran not to plough and plough only after the decision is taken. After counseling they left, however, he and Biran continued to plough. Deceased Budhwar went towards wooden peg and uprooted it, seeing this accused Biran stopped ploughing and ran towards the fencing, took up an axe and went towards Budhwar and assaulted him with axe over his neck, as result of which Budhwar fell on the ground and blood started oozing. Seeing this he left the place and ran towards the village. He narrated the incident to Pratap, Sarjal and Hariya Singh. Thereafter, all of them along with Kotwar went towards the place of incident. At some distance from the place of incident dead body of Harkunwar was lying, she had also sustained injuries over her neck and according to him Biran had assaulted her also. Patwari prepared the site plan in his presence. This witness has been cross-examined at length by the defence, however, he has stuck to his version given in examination-in-chief and the defence could not impeach the credibility and reliability of this witness.

14. PW-3 Pratap Singh is also a witness of the fact that on the date of incident at about 10.00 a.m. when he was ploughing his field Budhwar Singh came there and on his request, he along with four other persons went to the field where Biran was ploughing and asked Biran to stop ploughing, the matter will be resolved in the evening by Panchas and thereafter, he should act in accordance with the decision of the Panchas. After so advising they returned but Budhwar Singh remained there. At the same time when he along with others was ploughing his field, Hariram came there running and informed that Biran has chopped Budhwar. Hearing this they ran towards the place of incident and saw Budhwar and his wife, they were dead. Budhwar had sustained injuries over his neck.

However, he could not see the injury sustained by Harkunwar, but blood was oozing. In the cross-examination on the following day, he has stated that Hariram did not inform him anything.

15. If we go through the statement of Ramlal, nine-year-old child, who has been cross-examined at length by the defence counsel we find that this witness has stuck to the examination in chief to a great extent and his version is duly corroborated by the Merg intimation and Dehati Nalishi lodged by himself immediately after the incident. His statement is further corroborated by the statement of Hariram who was himself ploughing the field as a labour of the appellant. The statement of this witness also stands corroborated by the postmortem reports of both the deceased persons which have been proved by the doctors. The fact that the axe and *baniyan* seized from the appellant contained blood as per report of the F.S.L. (Ex.P/19) further substantiates the involvement of the accused in the crime in question, though in the serologists report origin and group of the blood found on the seized articles could not be ascertained.

16. The argument of counsel for the appellant based on paragraph 15 and 16 of the deposition of PW-1 Ramlal that this witness is a tutored witness, is not acceptable because he has stuck to his claim that he went to the place of occurrence along with his mother since morning and he has detailed the quarrel between his mother and the appellant even before the incident. He has stoutly denied the suggestion that he has not seen the incident and therefore, simply on the basis of his admission that he lodged the report as per advice of his brother Ramprasad, will not impeach his credibility because advice, if any, by the elder brother of this witness to lodge report about the incident as seen by him, to the police, cannot be considered tutoring. Presence of both the deceased persons Budhwar Singh and Harkunwar at the place of incident at the time when incident occurred is also established by statement of P.W. 3 Pratap Singh and immediately thereafter dead body of both the persons was found there.

17. So far as alternative defence taken by the appellant that the appellant was in settled possession of the land in question, the

deceased Budhwar Singh armed with axe and the deceased Harkunwar went there to dispossess him and, therefore, right of private defence of property was available to the appellant is concerned, the above argument is unacceptable because there is no evidence that the deceased forcibly tried to dispossess the appellant from the field of his possession. There is also no evidence that any injury was sustained by the appellant in the incident, moreover, there is evidence that the deceased and other villagers tried to counsel the appellant not to plough the field and get the matter resolved in Panchayat, however, the appellant killed two persons by assaulting them with axe on their vital part of the body i.e. neck without any provocation and as such, no right of private defence of property as claimed was available to the appellant.

18. On the basis of aforesaid analysis, we are of the considered opinion that the learned trial Court has not committed any illegality or infirmity while convicting the appellant under Section 302 of the IPC for commission of murder of Budhwar Singh and Harkunwar and sentencing him for life imprisonment as the same is based on evidence available on record.

19. In the result, the appeal preferred by the appellant being devoid of substance deserves to be dismissed and is accordingly, dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge